

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

<b>MICHAEL GORRIO,</b>	:	
<i>Plaintiff</i>	:	<b>CIVIL ACTION</b>
	:	
<b>v.</b>	:	
	:	
<b>SUPERINTENDENT JOSEPH TERRA,</b>	:	
<i>et al.,</i>	:	<b>No. 23-4366</b>
<i>Defendants</i>	:	

**ORDER**

AND NOW, this 4th day of, December, 2023, upon consideration of Plaintiff Michael Mr. Gorrio's Motion to Proceed *In Forma Pauperis* (ECF No. 1), his Prisoner Trust Fund Account Statement (ECF No. 3), and his *pro se* Complaint (ECF No. 2), it is **ORDERED** that:

1. For the reasons stated in the Court's Memorandum, Mr. Gorrio's claims based on the allegedly forced medical procedure on March 21, 2023 are **SEVERED** from this civil action into a separate lawsuit as follows:

- a. The Clerk of Court is **DIRECTED** to open a new civil action using a copy of this Order and accompanying Memorandum and a copy of the Complaint in the instant case (ECF No. 2).
- b. The new civil action shall name Michael Gorrio as the Plaintiff and shall name as Defendants Dr. Bazel and Correctional Officer Keil.
- c. The Clerk of Court is **DIRECTED** to assign the new civil action in accordance with applicable Court procedures.
- d. Mr. Gorrio will be required to either pay the fees or seek leave to proceed *in forma pauperis* to proceed in the new civil action.

- e. The new civil action may be subject to additional screening pursuant to 28 U.S.C. § 1915(e) and/or § 1915A.

2. For the reasons stated in the accompanying memorandum, Mr. Gorrio's claims based on the "fight club" on M-unit are **SEVERED** from this civil action into a separate lawsuit as follows:

- a. The Clerk of Court is **DIRECTED** to open a new civil action using a copy of this Order and accompanying Memorandum and a copy of the Complaint in the instant case (ECF No. 2).
- b. The new civil action shall name Michael Gorrio as the Plaintiff and shall name as Defendants Correctional Officer Shorter and Unit Manager Wychunis.
- c. The Clerk of Court is **DIRECTED** to assign the new civil action in accordance with applicable Court procedures.
- d. Mr. Gorrio will be required to either pay the fees or seek leave to proceed *in forma pauperis* to proceed in the new civil action.
- e. The new civil action may be subject to additional screening pursuant to 28 U.S.C. § 1915(e) and/or § 1915A.

3. Leave to proceed *in forma pauperis* is **GRANTED** as to the instant civil action pursuant to 28 U.S.C. § 1915.

4. Michael Gorrio, #QP-0644, shall pay the full filing fee of \$350 in installments, pursuant to 28 U.S.C. § 1915(b), regardless of the outcome of this case. The Court directs the Superintendent of SCI Phoenix or other appropriate official to assess an initial filing fee of 20% of the greater of (a) the average monthly deposits to Mr. Gorrio's inmate account; or (b) the average monthly balance in Mr. Gorrio's inmate account for the six-month period immediately preceding

the filing of this case. The Superintendent or other appropriate official shall calculate, collect, and forward the initial payment assessed pursuant to this Order to the Court with a reference to the docket number for this case. In each succeeding month when the amount in Mr. Gorrio's inmate trust fund account exceeds \$10.00, the Superintendent or other appropriate official shall forward payments to the Clerk of Court equaling 20% of the preceding month's income credited to Mr. Gorrio's inmate account until the fees are paid. Each payment shall refer to the docket number for this case.

5. The Clerk of Court is **DIRECTED** to send a copy of this Order to the Superintendent of SCI Phoenix.

6. The Complaint is **DEEMED** filed.

7. As stated in the Court's accompanying Memorandum, Mr. Gorrio's claims based on his placement in and conditions on the RHU are all **DISMISSED WITHOUT PREJUDICE** except for:

- a. Mr. Gorrio's claims against Officer Barretto for excessive force, retaliation, assault, and battery based on the June 1, 2023 use of force incident; and
- b. Mr. Gorrio's claims against Officer Nesmith, Sergeant Rivera, and Lieutenant Thompson for deliberate indifference and negligence based on the events related to the June 5, 2023 suicide attempt.

8. Mr. Gorrio may file an amended complaint within thirty (30) days of the date of this Order only as to claims pertaining to his placement in the RHU and the conditions on the RHU. Any amended complaint must identify all defendants in the caption of the amended complaint in addition to identifying them in the body of the amended complaint and shall state the basis for Mr. Gorrio's claims against each defendant. **Mr. Gorrio shall not include claims that**

are addressed in the severed lawsuits; if he does so, any such claims will be dismissed. Any amended complaint shall be a complete document that does not rely on the initial Complaint or other papers filed in this case or any other case to state a claim. When drafting his amended complaint, Mr. Gorrio should be mindful of the Court's reasons for dismissing the claims in his initial Complaint as explained in the Court's Memorandum. If Mr. Gorrio files an amended complaint and intends to proceed on claims that the Court has not dismissed, he must replead those claims, including all facts related to the claims. Failure to do so will result in the claim being dropped from the lawsuit.

9. Upon the filing of an amended complaint, the Clerk shall not make service until so **ORDERED** by the Court.

10. The Clerk of Court is **DIRECTED** to send Mr. Gorrio a blank copy of the Court's form complaint for a prisoner filing a civil rights action bearing the above civil action number. Mr. Gorrio may use this form to file his amended complaint if he chooses to do so.

11. If Mr. Gorrio fails to file any response to this Order, the Court will conclude that Mr. Gorrio intends to proceed only on the claims that the Court has determined pass statutory screening and will serve the Defendants involved with those claims as listed in Paragraph 7 of this Order. For faster processing, Mr. Gorrio may file a "Notice of Intent to Proceed" including civil action number 23-4366 indicating that he intends to proceed on these claims at this time.

**BY THE COURT:**

  
**GENE E.K. PRATTER**  
**UNITED STATES DISTRICT JUDGE**